

M^r Carrolls Opinion about Attaints etc^a

In Obedience to your Ex^{ncles} Ord^r to me for giving my Opinion in three severall Quæries put by your Ex^{ncy} I humbly offer that as to the first where your Ex^{ncy} puts the Quære Whether Attaints may be brought against Juries in this Countrey, and if to be done, by what Rule they may be brought.

I am of Opinion that in as much as We have no particular Law of our own Countrey relating to such a matter and having a generall Law whereby it is Enacted that in whatsoever Case our own Law is silent, that in such Case the Law of England must be pursued, that therefore Attaints may be brought against Juries here, and that the Rule they must be brought by, is the same Rule whereby they are brought in England, which Rule is plainly set down in our Books, and would be too tedious to insert here, there having severall Alterations been made therein by severall Statutes. As to the second where the Quære is, when any Error in Fact is Assigned vpon an Appeal or Writ of Error brought to a Superiour Court, before whom such Fact is not cognoscible, what course shall be taken to trye that matter of fact. I am of Opinion in the first place that an Error in Fact may very well be Assigned as appears clearly in our Books, and that such Error is not to be tryed by the Judges before whom it is Assigned, quia ad questionem facti non respondent Judices, but per pais that is a Jury of the Neighbourhood where such fact did Arise, for the impannelling whereof there must issue a Venire facias to the Sherrieff of the County, and if the Fact assigned be found by the Jury, the Judges before whom the Writ of Error was brought are to give their Judgm^t vpon the Law that arises out of the s^d Fact Quia ex facto Jus Oritur et ad questionem Juris non respondent Juratores sed Judices, and if the Fact so found be an Erronious Fact, the Judges ought to Reverse the Judgm^t; And I am further of Opinion (though it be some what beside the Quære) that in this Countrey there ought to be a greater latitude allowed in assigning of Errors, and the merits of the Cause to be more inquired into by the Judges before whom an Appeal or Writ of Error is brought, than in England; Because some of our Judges and some of our Juryes (which for want of knowing, and more consciencious Men must of necessity be made vse of) do oftentimes Judge according to the Affection or disaffection they have for the person plaintiffe or Defendant, and not according to the Merit of the Cause or the Law that Arises vpon the pleadings thereof; This I should not have the confidence to Avert, had I not been an Eye Witness and a hearer of Matters which make it evident; for which digression from the Quære, I humbly beg your Ex^{ncles} pardon.

As to the third Quære, which concerns the particular case of Esq^r Randolph and Blackmore vpon an information exhibited by the s^d Randolph against the Ship Anne whereof the s^d Blackmore was Mast^r for taking severall hogshheads of Tobacco on Board before such Bond given, as the Act of